

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

FREDERIC A. YURISICH and VERA M.
YURISICH,

Defendants.

No. CR-06-058-FVS

ORDER

THIS MATTER comes before the Court based upon the defendants' respective motions for a new trial and judgment of acquittal. Frederic A. Yurisich is represented by Kimberly A. Deater. Vera M. Yurisich is represented by Frank L. Cikutovich. The government is represented by K. Jill Bolton.

BACKGROUND

Frederic and Vera Yurisich filed a civil action against the United States. On September 16, 2004, Assistant United States Attorney ("AUSA") Frank Wilson took their depositions. Approximately two months later, the Yurisiches settled their claims against the United States. On June 6, 2006, the United States Attorney for the Eastern District of Washington filed an indictment charging both Mr. and Mrs. Yurisich with perjury. 18 U.S.C. § 1621. Trial began on December 4th. During the course of the trial, the Court admitted a

1 transcript of Yurisiches' depositions. The jury returned verdicts of
2 guilty on December 8th. On December 14th, Mr. Yurisich moved for a
3 new trial. Fed.R.Crim.P. 33. The next day, Mrs. Yurisich also moved
4 for a new trial. *Id.* On December 19th, the Court granted an
5 extension of the deadline for filing memoranda. On January 18, 2007,
6 the Court granted a second extension. Mr. Yurisich filed a memorandum
7 on February 1st. Mrs. Yurisich did not file a memorandum in support
8 of her motion for a new trial. Instead, on February 2nd, she filed a
9 motion for judgment of acquittal. Fed.R.Crim.P. 29(c).

10 **RULING**

11 Frederic Yurisich

12 Mr. Yurisich argues that the questions which AUSA Wilson posed
13 during his deposition constitute testimonial statements within the
14 meaning of *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158
15 L.Ed.2d 177 (2004), and *Davis v. Washington*, 547 U.S. ----, 126 S.Ct.
16 2266, 165 L.Ed.2d 224 (2006). Furthermore, there is no indication
17 that AUSA Wilson was unavailable to testify at Mr. Yurisich's perjury
18 trial. It follows, says Mr. Yurisich, that the Court violated his
19 right to confrontation as guaranteed by the Sixth Amendment to the
20 Constitution by admitting the transcript of his deposition without
21 redacting AUSA Wilson's questions. See *Crawford*, 541 U.S. at 68, 124
22 S.Ct. at 1374. Mr. Yurisich argues that the error was plain and that
23 he is entitled to a new trial. The Court disagrees. In *Crawford*, the
24 Supreme Court noted, "The [Confrontation] Clause . . . does not bar
25 the use of testimonial statements for purposes other than establishing
26

1 the truth of the matter asserted." 541 U.S. at 60 n.9, 124 S.Ct. at
2 1369 n.9 (citation omitted). Citing this observation, two circuit
3 courts of appeal have stated that *Crawford* "only covers hearsay, i.e.,
4 out-of-court statements 'offered in evidence to prove the truth of the
5 matter asserted.'" *United States v. Tolliver*, 454 F.3d 660, 666 (7th
6 Cir.2006) (quoting Federal Rule of Evidence 801). See also *United*
7 *States v. Faulkner*, 439 F.3d 1221, 1226 (10th Cir.2006) (same). There
8 is no reason to think the Ninth Circuit will disagree. The issue,
9 then, is whether AUSA Wilson's questions during the deposition were
10 hearsay when presented to the jury during the Yurisiches' perjury
11 trial. They were not. *United States v. Anfield*, 539 F.2d 674 (9th
12 Cir.1976), provides useful guidance. In that case, Billy Anfield
13 testified before a grand jury and, later, at the trial of Leslie
14 Jackson. *Id.* at 676. The testimony that Mr. Anfield gave at Mr.
15 Jackson's trial differed in material respects from the testimony he
16 provided to the grand jury. *Id.* The United States charged Mr.
17 Anfield with perjury. *Id.* The AUSA who handled Mr. Jackson's case
18 testified at Mr. Anfield's trial, relating what Anfield had said to
19 the grand jury. *Id.* at 678. Mr. Anfield objected on the ground that
20 the AUSA's testimony was inadmissible hearsay. The Ninth Circuit
21 disagreed:
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23 The prosecutor's testimony at appellant's trial that
24 appellant had testified before the grand jury that Jackson
25 told him that there was a camera and a single girl in the
26 bank which was robbed and then denied this at Jackson's
trial was not hearsay for the purposes of the present case.
The prosecutor was not attempting to prove that there was in
fact a camera and single girl in the bank; those facts were

1 not in issue at appellant's trial. Rather, the prosecutor's
2 statements indicate only that the appellant made
inconsistent statements under oath.

3 *Id.* This case is similar. The government did not offer AUSA Wilson's
4 deposition questions at the Yurisiches' perjury trial in order to
5 prove the activities that Mr. Yurisich was capable of performing. To
6 the contrary, the government offered AUSA Wilson's questions in order
7 to establish the context in which the Yurisiches gave their deposition
8 answers. A statement offered to show context generally is not
9 hearsay. *See United States v. Whitman*, 771 F.2d 1348, 1352 (9th
10 Cir.1985) ("the court did not admit the informant's statements for
11 their truth but only to show that they were made"). Consequently,
12 AUSA Wilson's questions do not fall within the scope of *Crawford* and
13 *Davis*.¹

14
15 Vera Yurisich

16 Federal Rule of Criminal Procedure 29(c)(1) provides that a post-
17 trial motion for judgment of acquittal must be made within seven days
18 of the verdict. The defendant may move for an extension of the seven-
19 day deadline, but the defendant must do so within seven days of the
20 verdict. Fed.R.Crim.P. 29, Advisory Committee Notes, 2005 Amendments
21 ("The defendant may, under Rule 45, seek an extension of time to file
22 the underlying motion as long as the defendant does so within the
23 seven-day period."). Mrs. Yurisich did not file either a Rule 29(c)
24 motion or a request for an extension during the seven days following
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26 ¹By not filing a memorandum, Mrs. Yurisich abandoned her
motion for a new trial.

1 the verdict. Thus, her Rule 29(c) motion is untimely.

2 **IT IS HEREBY ORDERED:**

3 1. Frederic Yurisich's motion for a new trial (**Ct. Rec. 107**) is
4 denied.

5 2. Vera Yurisich's motion for a new trial (**Ct. Rec. 109**) is
6 denied.

7 3. Vera Yurisich's motion for judgment of acquittal (**Ct. Rec.**
8 **119**) is denied.

9 **IT IS SO ORDERED.** The District Court Executive is hereby
10 directed to enter this order and furnish copies to counsel.

11 **DATED** this 12th day of April, 2007.

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13 s/Fred Van Sickle
14 Fred Van Sickle
United States District Judge
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